IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17991 of 2005

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HS NIGAM, SR.L SECTION ENGINEER (P WAY) - Petitioner(s)
Versus
UNION OF INDIA & 2 - Respondent(s)

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Appearance :
MR MS TRIVEDI for Petitioner(s) : 1, MS PRANJAL M TRIVEDI for Petitioner(s) : 1
MS MEGHA JANI for Respondent(s) : 1, 2, 3

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 07/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. The petitioner is a Senior Section Engineer (P.Way). According to him he was qualified in the selection and placed on panel for promotion. Annexure-B is the order dated 21.9.2004 wherein his name was shown at Sr. No.25. That order reached the office on 19.10.2004. Before it was given effect within two days i.e. on 21.10.2004, he was caught red handed while taking bribe at Bhavnagar. He was arrested for the offence of taking bribe and by an order dated 1.11.2004 he was placed under suspension. Thereafter, by an order dated 3.12.2004 his promotion was cancelled in view of the fact that he was caught red handed while taking bribe. He was served with a charge sheet dated 7.11.2005 and on the same day i.e. on 7.11.2005 sanction was accorded to prosecute him for the offence punishable under the Prevention of Corruption Act by the sanctioning authority. Thereupon, criminal case came to be registered against him and it is pending before the competent court. He had approached the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short “Tribunal”) by way of O.A. No.663 of 2004 (Annexure-E) in December, 2004 and prayed that the action on the part of the respondents in not allowing him to resume duty on promotional post pursuant to the order dated 10.9.1994 issued by head quarters and subsequent order dated

18.10.2004 be quashed and set aside. However, the learned Tribunal, by its impugned judgment and order dated 5.8.2005 (Annexure-A) dismissed his O.A. Hence, this petition.

2. Mr.Trivedi, learned counsel for the petitioner submitted that once an order dated 10.9.2004 was passed and he was recommended for promotion to the higher post, then it was not open to the respondents to prevent him from taking charge of promotional post under the guise that he was subsequently caught on 21.10.2004 for the charge of taking brine from the contractor. He also submitted that once an order of promotion was passed, then it could not have been cancelled subsequently on 3.12.2004 without affording an opportunity of hearing to him. In support of his submission, Mr.Trivedi has placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Union of India v. K.V.Jankiraman reported in AIR 1991 SCC 2010***. He submitted that the learned Tribunal has also committed grave error in not considering these aspects of the matter while dismissing his application.

3. It is true that the petitioner was placed in the selection panel of AEN by order dated 10.9.2004 and subsequently order dated 18/19.10.2004 of giving promotion to other persons was passed wherein the name of the petitioner-applicant was shown at Sr. No.25 indicating that he was promoted to Group “B” post of AEN (TR) BVG against the vacancy. But, before that order of

promotion was served upon the petitioner within two days thereof i.e. on 21.10.2004 he was caught red handed while taking bribe and placed under suspension by order dated 1.11.2004. It is true that the petitioner had submitted his report on 27.10.2004 for allowing him to join the duty on promotional post, but in view of the fact that he was arrested on 21.10.2004, he was rightly not allowed to resume the duty.

4. As stated earlier, his promotion came to be subsequently cancelled by an order dated 3.12.2004. Once the order of promotion was cancelled, then there was no question of giving effect to his order of promotion passed earlier. This was the view taken by the learned Tribunal while rejecting his application with which we are in complete agreement. In fact, on the passing of the cancellation order of promotion on 3.12.2004, his application filed before the learned Tribunal praying for implementation of his promotion order had become infructuous and accordingly it was to be disposed of by the learned Tribunal.

5. Going through the impugned order passed by the learned Tribunal it appears that the petitioner had also challenged his suspension. The said challenge does not survive any more as after the learned Tribunal passed the impugned judgment and order on 5.8.2005, his suspension was revoked by the authority and he was reinstated in service on 19.10.2005 on reviewing his case

by the Authority itself.

6. In view of the above peculiar facts and circumstances of the case, we are of the considered opinion that the judgment of the Hon'ble Supreme Court in case of Jankiraman (supra) will have no application. Therefore, we have refrained ourselves from dealing with the same in detail in the judgment.

7. At this stage, a request was made by Mr.Trivedi that he may be allowed to challenge the subsequent order of cancellation of his promotion passed by the Authority on 3.12.2004. For that, permission of this court is not necessary. It is always open to the petitioner to challenge such order in accordance with law before appropriate authority by way of appropriate proceedings. As and when such challenge is made, we are sure that the concerned authority will consider such challenge strictly in accordance with law.

8. In view of the above discussion, this petition fails and is hereby dismissed. Rule discharged. No order as to costs.

(B.J.SHETHNA, J.)

(M.D.SHAH, J.)

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